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September 25, 2001

EX PARTE

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20554

Re: Notice of Ex Parte Meeting Regarding Bell Atlantic Network Services
Transmittals 1373 and 1374; CC Docket No. 01-140

Dear Ms. Salas:

Pursuant to Section 1.1206(b)(2) of the Commission Rules, this letter is to provide notice in the above-referenced proceeding of an ex parte meeting. On September 24, 2001, Jonathan Askin and Kim Kirby of ALTS, Morton Posner of Allegiance Telecom, Inc., and Harry Malone on behalf of ALTS, Allegiance Telecom, Inc., Covad Communications Co., Focal Communications, Inc. and XO Communications, Inc. met with Matthew Brill, Samuel Feder, and Jordan Goldstein, Legal Advisors to Commissioners Abernathy, Martin and Copps, respectively. The talking points of this meeting were provided via electronic mail to Kyle Dixon, Legal Advisor to Chairman Powell.

Pursuant to the Commission's rules, one copy each of this letter and the talking points are being submitted to the Electronic Comment Filing System for filing in the above-referenced proceeding.

Sincerely,

Harry N. Malone

Enc.: Summary of Talking Points

SUMMARY OF SEPTEMBER 24, 2001 MEETING WITH FCC LEGAL ADVISORS

- Verizon bears the burden of proving that its rates are reasonable. Verizon has not met the burden. Verizon will not be seriously harmed if its rates are rejected and Verizon is required to re-file new tariffs with supporting data justifying the rate increases.
- If the Bureau has not had time to properly evaluate Verizon's cost model, it is Verizon's issue, not the CLECs' or the Bureau's. Verizon ostensibly had this data when it developed its costs, and should have been able to file it with its Direct Case, rather than providing it a bit at a time over a period of two months.
- Verizon claims that its proposed rates do not result in increased charges overall because it no longer charges on a per-fused amp basis, and instead charges on per-load amp basis, thus decreasing the total number of amps for which a collocated competitor will be charged each month. To investigate this claim, the Bureau directed Verizon to demonstrate that its previously tariffed DC power rates were based upon cost studies that assessed power costs on a per-fused amp basis and that it charges its customers on a per-fused amp basis. (Verizon has failed to provide such evidence.)

The issue of whether Verizon's rates are based on fused amps or load amps has been a contentious one throughout Verizon's region. Verizon argues that it should charge for fused amps, while the CLECs have established in numerous forums that Verizon's tariffs provide that DC power is charged on a load amp basis, and a load amp basis only. The CLECs unequivocally maintain that Verizon has consistently violated its tariffs and unilaterally charged on a per-fused amp basis, resulting in tens of millions of dollars in overcharges to CLECs across its region.

In the face of these complaints, Verizon has filed tariff revisions at the state and federal level in which it changed its rate application to properly reflect charging on a "per-load amp" basis. But with Transmittal 1373, it has also inflated its "per-load amp" rates so that it can maintain or increase its total revenues and continue to reap an unjust and anticompetitive windfall.

The FCC must not let Verizon confuse the issue of its unreasonable rates with the issue of its unreasonable billing practices. Revising its rates to apply on a "per-load amp" basis is not a magnanimous gesture or even a concession – Verizon is merely eliminating an unlawful billing practice that is otherwise unrelated to this proceeding. The Bureau should evaluate the reasonableness of Verizon's newly proposed rates on their own merits, and not in conjunction with a scheme in which Verizon gives with one hand and takes with the other.

- Verizon continues to inadequately justify its Engineered, Furnished and Installed ("EF&I") factor. Verizon's EF&I is the single largest contributor to the inflation of Verizon's costs, and is the primary factor responsible for the difference between what Verizon says its costs should be and what CLECs believe they should be.

- Verizon has still not shown that its Building and Land Investment factor does not double-recover costs that are recovered in its space charges. CLECs believe that Verizon must be recovering some of its DC power costs in its space preparation fee, because the space preparation charge in its FCC tariff is so much higher than in its Verizon-North state tariffs.
- The rate increases, spread over all collocation sites, will raise collocators monthly costs by tens of thousands of dollars per month. DC power costs are one of the largest element of collocation costs.
- These tariff revisions are not the only examples of Verizon increasing collocation costs. They are also attempting to backbill collocators for voice grade terminations and unused OCT terminations.